

DISCLAIMER

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**COMMONWEALTH OF VIRGINIA
STATE CORPORATION COMMISSION**

APPLICATION OF)	
)	
VIRGINIA ELECTRIC AND POWER COMPANY)	CASE NO. PUE000741
)	
For a certificate of public convenience and necessity)	
under the Utility Facilities Act to develop, construct,)	
own and operate an intrastate natural gas pipeline))	

HEARING EXAMINER'S PROTECTIVE RULING

March 12, 2001

On March 8, 2001, Virginia Electric and Power Company ("Virginia Power"), by counsel, filed a motion requesting the entry of a Protective Order setting forth the procedures by which confidential proprietary information shall be handled generally in this proceeding. Virginia Power also asserts that certain information designated as "competitively sensitive" requires an additional level of protection as a result of electric utility industry restructuring and the emergence of competitive markets for the sale and purchase of electricity. It proposes to individually enter into nondisclosure agreements with parties to this proceeding who may request access to such competitively sensitive information. These agreements will, to the extent reasonable, permit such parties to have access to the information under more restrictive protective provisions.

Upon consideration of Virginia Power's request, I am of the opinion and find that protected treatment is warranted for confidential information in this case. Accordingly,

IT IS DIRECTED THAT any documents, materials, and information to be produced by any party ("Party") in this proceeding, either for itself or for its affiliates, in response to Commission orders, rulings, Commission Staff ("Staff") data requests, or properly propounded interrogatories or requests for production of documents from Parties in this proceeding, which documents, materials, or information the producing party designates as confidential ("Confidential Information"), shall be produced, examined and used only in accordance with the following conditions:

(1) All Confidential Information produced to Staff or Parties shall be used solely for the purposes of this proceeding (including any appeals).

(2) Access to Confidential Information shall be specifically limited to Staff or Parties, their counsel and expert witnesses, and to support personnel who are working on this case under the

direction of their counsel or expert witnesses and to whom it is necessary that the Confidential Information be shown for the purposes of this proceeding, so long as each such person has executed an Agreement to Adhere to Protective Ruling ("Agreement") which is Attachment A to this Protective Ruling. Staff, Staff counsel, and Staff's expert witnesses are not required to sign the Agreement, but are subject to the provisions hereof. All Agreements must be properly forwarded to the producing party upon execution, and the producing party shall provide a list of those persons entitled to access Confidential Information to the Clerk of the Commission and all counsel of record.

(3) In the event that Staff or Parties seek permission to grant access to any Confidential Information to any person other than the persons authorized under Paragraph (2) above, the party desiring permission shall seek a stipulation from counsel for the producing party. The producing party shall be under no obligation to furnish Confidential Information to persons other than those described in Paragraph (2) above absent such stipulation unless specifically ordered by the Commission or Examiner to do so. Parties are encouraged, however, to seek stipulations to the maximum extent practicable. In the event of a negative response, the party seeking disclosure permission may apply to the Commission or Examiner for such permission.

(4) Any Party that contends it (a) should not be required to produce specific documents, materials or information due to their commercially or competitively sensitive nature, ("Competitively Sensitive Information") or (b) should restrict access to Competitively Sensitive Information, shall bear the burden of proving that such specific documents, materials, or information should not be discoverable or access should be restricted. For purposes of responding to interrogatories or data requests propounded by Parties in this proceeding, the production and handling of Competitively Sensitive Information shall be governed by the terms of an appropriate nondisclosure agreement between the producing party and the other party. While the Staff is bound by the terms of this Ruling, it is not required to execute a nondisclosure agreement in order to gain access to Competitively Sensitive Information.

(5) Competitively Sensitive Information need not be made available to entities that sell electricity (capacity or energy) on the open market in retail or wholesale transactions ("Electricity Marketers"). If a Party has divisions or affiliated companies that are Electricity Marketers, Competitively Sensitive Information will not be shown to, shared with, or disseminated in any manner to such divisions or affiliated companies that are Electricity Marketers. Except for its use in Case No. PUE000741 and without limiting the generality of the foregoing, such information and knowledge shall not be used by the recipient, in any manner, to gain an advantage over the producing party or for any other purpose in litigation, negotiation, competition or consultation.

(6) If a portion of the Competitively Sensitive Information contains projections, forward-looking statements and other material non-public information normally distributed only to senior officers and directors of the producing party or its parent corporation, such information should be clearly marked as "Inside Information." The receiving party and its authorized representatives who have access to Competitively Sensitive Information as set forth above and who require access to Inside Information that may be included in such Competitively Sensitive Information shall not trade in any securities of the

producing party or its corporate parent while in the possession of or knowledgeable of such information, unless and until otherwise advised by the producing party that such trading is permitted. This provision shall not be deemed to prohibit purchases, sales, or ownership of shares in mutual funds that may hold or trade in securities of the producing party.

(7) The Party producing Competitively Sensitive Information should clearly label such information and list it as an attachment to the nondisclosure agreement updated as additional information is provided. A similar list of such information provided to Staff shall be provided to Staff counsel.

(8) A Party withholding Competitively Sensitive Information from any participant¹ shall immediately provide the requesting party with a log enumerating all such information. The log shall specify the following about the information withheld: (i) the original requesting party; (ii) the data request number and date of the request; (iii) the type of information (*e.g.*, computer-stored information, microfilm, letter, memorandum, policy circular, minute book, telegram, chart, etc.) or some other means of identifying it; (iv) its present location and custodian; (v) the nature of the information; and (vi) the basis for the claim that the information is competitively sensitive. The withholding party shall telefax updates to the log, if any, to participants on the first occasion Competitively Sensitive Information is withheld from any participant, and thereafter on a weekly basis, for the duration of the proceeding. The obligations imposed by this paragraph shall be in addition to the withholding party's obligation to make specific objections to a data request that seeks Competitively Sensitive Information.

(9) The Clerk of the Commission is directed to maintain under seal all documents, materials, and information filed with the Commission in this proceeding which the producing party has designated, in whole or in part, as Confidential Information or Competitively Sensitive Information.

(10) In the event Staff or Parties seek to introduce testimony, exhibits, or studies that disclose Confidential Information or Competitively Sensitive Information, the Staff or the party seeking such introduction shall:

- (a) Notify the producing party at least three (3) days in advance of any hearing regarding testimony that is not prefiled unless a shorter period would not unduly prejudice the producing party.
- (b) If such testimony is prefiled, file such testimony, exhibits or studies under seal and also file copies deleting those parts that contain references to or portions of the designated Confidential Information or Competitively Sensitive Information. The testimony, exhibits, or studies containing the Confidential Information or Competitively Sensitive Information filed with the Commission shall be kept under seal unless or until the Commission or Examiner rules to the contrary. Each party shall, upon signing

¹ For purposes of this Ruling, the term "participant" means all parties and Staff.

Attachment A hereof or an appropriate nondisclosure agreement, receive a copy of those parts of the testimony, exhibits, or studies that contain references to or portions of the designated Confidential Information or Competitively Sensitive Information and each party and counsel shall be bound by this Ruling insofar as it restricts the use of and granting of access to the Confidential Information or Competitively Sensitive Information. That portion of the transcript recording such testimony shall be placed in the record under seal.

(11) Oral testimony regarding Confidential Information or Competitively Sensitive Information, if ruled admissible, will be taken in camera and that portion of the transcript recording such testimony shall be placed in the record under seal.

(12) No person authorized under this Protective Ruling to have access to Confidential Information or Competitively Sensitive Information shall disseminate, communicate, or reveal any such Confidential Information or Competitively Sensitive Information to any person not specifically authorized under this Protective Order to have access to such confidential information.

(13) At the conclusion of this proceeding (including any appeals), any originals or reproductions of any Confidential Information or Competitively Sensitive Information produced pursuant to this Ruling shall be returned by the Party to the producing party (or destroyed) if requested to do so by the producing party. At such time, any originals or reproductions of any Confidential Information or Competitively Sensitive Information in Staff's possession will be returned to the producing party, destroyed or kept with Staff's permanent work papers in a manner that will preserve the confidentiality of the Confidential Information or Competitively Sensitive Information. Insofar as the provisions of this Protective Ruling restrict the communications and use of the Confidential Information or Competitively Sensitive Information produced thereunder, such restrictions shall continue to be binding after the conclusion of this proceeding (including any appeals) as to the Confidential Information or Competitively Sensitive Information.

(14) This Ruling does not preclude Staff or Parties from arguing, prior to public disclosure, that documents, materials, and information received under the Ruling should not be treated as confidential. But in no event shall any party disclose Confidential Information or Competitively Sensitive Information it has received subject to this Ruling absent a finding by the Commission or Examiner that such information does not require confidential treatment. If Staff or any party desires to make such an assertion, the producing party shall be given reasonable notice before being required to bear the burden of proving the contrary, and reasonable notice shall be at least three (3) days in advance of a hearing in connection with testimony that is not prefiled and that contains Confidential Information or Competitively Sensitive Information. The burden of proof to show that documents, materials, or information require confidential treatment as trade secrets, commercially, competitively, or personally sensitive information, or other grounds for confidential treatment shall be upon the proponent of maintaining the documents, materials, or information in confidence.

(15) A producing party is obligated to separate non-confidential documents, materials, and information from Confidential Information and Competitively Sensitive Information wherever practicable, and to provide the non-confidential documents, materials, and information forthwith.

Michael D. Thomas
Hearing Examiner

Document Control Center is requested to mail or deliver a copy of the above Ruling on March 12, 2001 to James C. Dimitri, Esquire, Stephen H. Watts, II, Esquire, David K. Dewey, Esquire, and Renae Carter, Esquire, McGuireWoods LLP, One James Center, 901 East Cary Street, Richmond, VA 23219; Pamela Walker, Esquire, and Jill Hayek, Esquire, Virginia Electric and Power Company, P.O. Box 26666, Richmond, VA 23261; John F. Dudley, Senior Assistant Attorney General, Division of Consumer Counsel, Office of the Attorney General, 900 East Main Street, Second Floor, Richmond, VA 23219; Honorable Michele B. McQuigg, Virginia House of Delegates, 2241-R Tacketts Mill Drive, Woodbridge, VA 22192; Donald R. Hayes, Senior Attorney, Washington Gas Light Company, 1100 H Street, N.W., Washington, D.C. 20080; Dawn S. McGrain, Department of Environmental Quality, Division of Environmental Enhancement, 629 East Main Street, Sixth Floor, Richmond, VA 23219; O. Gene Dishner, Director, Department of Mines, Minerals and Energy, P.O. Box 3667, Charlottesville, VA 22903-0667; Michael Murphy, Director, Division of Environmental Enhancement Quality, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240; Lisa P. Sausville, Regional Nongame Biologist, Department of Game and Inland Fisheries, P.O. Box 11104, Richmond, VA 23230-1104; David G. Brockley, Director, Department of Conservation and Recreation, 203 Governor Street, Suite 326, Richmond, VA 23219-2010; Frank M. Fulgham, Program Manager, Department of Agriculture and Consumer Services, Division of Consumer Protection, Office of Plant & Pest Services, P.O. Box 1163, Richmond, VA 23218; Charles D. Nottingham, Commissioner, Department of Transportation, 1401 East Broad Street, Richmond, VA 23219-2000; Mark C. Eversole, Environmental Engineer, Marine Resources Commission, 2600 Washington Avenue, P.O. Box 756, Newport News, VA 23607-0756; Catherine M. Harold, Environmental Engineer, Chesapeake Bay Local Assistance Department, James Monroe Building, 101 North 14th Street, 17th Floor, Richmond, VA 23219; Sherry H. Bridewell, Commission counsel; and the Commission's Divisions of Public Utility Accounting, Economics and Finance, and Energy Regulation.

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AGREEMENT TO ADHERE TO PROTECTIVE RULING

I, _____, on behalf of and representing _____,
hereby acknowledge having read and understood the terms of the Protective Ruling entered in this
proceeding by the Hearing Examiner on _____, 2001, and agree to treat all Confidential
Information that I receive in connection with Case No. PUE000741 as set forth in that Ruling.

Signature: _____

Printed Name: _____

On behalf of: _____